

ARM13F75

S.L.C.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To further improve procedures relating to courts-martial under the Uniform Code of Military Justice.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 1197

To authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mrs. GILLIBRAND

Viz:

- 1 Strike section 552, relating to the review of decisions
- 2 not to refer charges of certain offenses to trial by court-
- 3 martial.

- 4 At the end of subtitle E of title V, insert the fol-
- 5 lowing:

1 **PART IV—ADDITIONAL MILITARY JUSTICE**

2 **MATTERS**

3 **SEC. 568. MODIFICATION OF AUTHORITY TO DETERMINE**
4 **TO PROCEED TO TRIAL BY COURT-MARTIAL**
5 **ON CHARGES ON OFFENSES WITH AUTHOR-**
6 **IZED MAXIMUM SENTENCE OF CONFINEMENT**
7 **OF MORE THAN ONE YEAR.**

8 (a) **MODIFICATION OF AUTHORITY.—**

9 (1) **IN GENERAL.—**With respect to charges
10 under chapter 47 of title 10, United States Code
11 (the Uniform Code of Military Justice), that allege
12 an offense, other than an offense specified in para-
13 graph (2), that is triable by court-martial under that
14 chapter for which the maximum punishment author-
15 ized under that chapter includes confinement for
16 more than one year, the Secretary of Defense shall
17 require the Secretaries of the military departments
18 to provide for the determination under section
19 830(b) of such chapter (article 30(b) of the Uniform
20 Code of Military Justice) on whether to try such
21 charges by court-martial as provided in paragraph
22 (3).

23 (2) **EXCLUDED OFFENSES.—**Paragraph (1)
24 does not apply to an offense as follows:

25 (A) An offense under sections 883 through
26 917 of title 10, United States Code (articles 83

1 through 117 of the Uniform Code of Military
2 Justice).

3 (B) An offense under section 933 or 934
4 of title 10, United States Code (articles 133
5 and 134 of the Uniform Code of Military Jus-
6 tice).

7 (3) REQUIREMENTS AND LIMITATIONS.—The
8 disposition of charges pursuant to paragraph (1)
9 shall be subject to the following:

10 (A) The determination whether to try such
11 charges by court-martial shall be made by a
12 commissioned officer of the Armed Forces des-
13 ignated in accordance with regulations pre-
14 scribed for purposes of this subsection from
15 among commissioned officers of the Armed
16 Forces in grade O-6 or higher who—

17 (i) are available for detail as trial
18 counsel under section 827 of title 10,
19 United States Code (article 27 of the Uni-
20 form Code of Military Justice);

21 (ii) have significant experience in
22 trials by general or special court-martial;
23 and

24 (iii) are outside the chain of command
25 of the member subject to such charges.

1 (B) Upon a determination under subpara-
2 graph (A) to try such charges by court-martial,
3 the officer making that determination shall de-
4 termine whether to try such charges by a gen-
5 eral court-martial convened under section 822
6 of title 10, United States Code (article 22 of
7 the Uniform Code of Military Justice), or a spe-
8 cial court-martial convened under section 823
9 of title 10, United States Code (article 23 of
10 the Uniform Code of Military Justice).

11 (C) The determination to try such charges
12 by court-martial under subparagraph (A), and
13 by type of court-martial under subparagraph
14 (B), shall be binding on any applicable con-
15 vening authority for a trial by court-martial on
16 such charges.

17 (D) The actions of an officer described in
18 subparagraph (A) in determining under that
19 subparagraph whether or not to try charges by
20 court-martial shall be free of unlawful or unau-
21 thorized influence or coercion.

22 (E) The determination under subpara-
23 graph (A) not to proceed to trial of such
24 charges by general or special court-martial shall
25 not operate to terminate or otherwise alter the

1 authority of commanding officers to refer such
2 charges for trial by summary court-martial con-
3 vened under section 824 of title 10, United
4 States Code (article 24 of the Uniform Code of
5 Military Justice), or to impose non-judicial pun-
6 ishment in connection with the conduct covered
7 by such charges as authorized by section 815 of
8 title 10, United States Code (article 15 of the
9 Uniform Code of Military Justice).

10 (4) CONSTRUCTION WITH CHARGES ON OTHER
11 OFFENSES.—Nothing in this subsection shall be con-
12 strued to alter or affect the disposition of charges
13 under chapter 47 of title 10, United States Code
14 (the Uniform Code of Military Justice), that allege
15 an offense triable by court-martial under that chap-
16 ter for which the maximum punishment authorized
17 under that chapter includes confinement for one
18 year or less.

19 (5) POLICIES AND PROCEDURES OF THE MILI-
20 TARY DEPARTMENTS.—

21 (A) IN GENERAL.—The Secretaries of the
22 military departments shall revise policies and
23 procedures as necessary to comply with this
24 subsection.

1 (B) UNIFORMITY.—The General Counsel
2 of the Department of Defense shall review the
3 policies and procedures revised under this para-
4 graph in order to ensure that any lack of uni-
5 formity in policies and procedures, as so re-
6 vised, among the military departments does not
7 render unconstitutional any policy or procedure,
8 as so revised.

9 (6) MANUAL FOR COURTS-MARTIAL.—The Sec-
10 retary of Defense shall recommend such changes to
11 the Manual for Courts-Martial as are necessary to
12 ensure compliance with this subsection.

13 (b) EFFECTIVE DATE AND APPLICABILITY.—Sub-
14 section (a), and the revisions required by that subsection,
15 shall take effect on the date that is 180 days after the
16 date of the enactment of this Act, and shall apply with
17 respect to charges preferred under section 830 of title 10,
18 United States Code (article 30 of the Uniform Code of
19 Military Justice), on or after such effective date.

20 **SEC. 568A. MODIFICATION OF OFFICERS AUTHORIZED TO**
21 **CONVENE GENERAL AND SPECIAL COURTS-**
22 **MARTIAL.**

23 (a) IN GENERAL.—Subsection (a) of section 822 of
24 title 10, United States Code (article 22 of the Uniform
25 Code of Military Justice), is amended—

1 (1) by striking paragraphs (5) through (8);

2 (2) by inserting after paragraph (4) the fol-
3 lowing new paragraph (5):

4 “(5) the officers in the offices established pur-
5 suant to section 568A(c) of the National Defense
6 Authorization Act for Fiscal Year 2014 or officers in
7 the rank of O-6 or higher who are assigned such re-
8 sponsibility by the Chief of Staff of the Army, the
9 Chief of Naval Operations, the Chief of Staff of the
10 Air Force, or the Commandant of the Marine Corps;
11 or”; and

12 (3) by redesignating paragraph (9) as para-
13 graph (6).

14 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
15 MAND OF ACCUSED OR VICTIM.—Such section (article) is
16 further amended by adding at the end the following new
17 subsection:

18 “(c) An officer specified in subsection (a)(5) may not
19 convene a court-martial under this section if the person
20 is in the chain of command of the accused or the victim.”.

21 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
22 TIAL.—

23 (1) OFFICES REQUIRED.—Each Chief of Staff
24 of the Armed Forces specified in paragraph (5) of
25 section 822(a) of title 10, United States Code (arti-

1 cle 22(a) of the Uniform Code of Military Justice),
2 as amended by subsection (a), shall establish an of-
3 fice to do the following:

4 (A) To convene general and special courts-
5 martial under sections 822 and 823 of title 10,
6 United States Code (articles 22 and 23 of the
7 Uniform Code of Military Justice), pursuant to
8 paragraph (5) of section 822(a) of title 10,
9 United States Code (article 22(a) of the Uni-
10 form Code of Military Justice), as so amended.

11 (B) To detail under section 826 of title 10,
12 United States Code (article 26 of the Uniform
13 Code of Military Justice), judges of courts-mar-
14 tial convened as described in subparagraph (A).

15 (C) To detail under section 827 of title 10,
16 United States Code (article 26 of the Uniform
17 Code of Military Justice), members of courts-
18 martial convened as described in subparagraph
19 (A).

20 (2) PERSONNEL.—The personnel of each office
21 established under paragraph (1) shall consist of such
22 members of the Armed Forces and civilian personnel
23 of the Department of Defense as may be detailed or
24 assigned to the office by the Chief of Staff con-
25 cerned. The members and personnel so detailed or

1 assigned, as the case may be, shall be detailed or as-
2 signed from personnel billets in existence on the date
3 of the enactment of this Act.

4 **SEC. 568B. DISCHARGE USING OTHERWISE AUTHORIZED**
5 **PERSONNEL AND RESOURCES.**

6 (a) IN GENERAL.—The Secretaries of the military
7 departments shall carry out sections 568 and 568A (and
8 the amendments made by section 568A) using personnel,
9 funds, and resources otherwise authorized by law.

10 (b) NO AUTHORIZATION OF ADDITIONAL PER-
11 SONNEL OR RESOURCES.—Sections 568 and 568A (and
12 the amendments made by section 568A) shall not be con-
13 strued as authorizations for personnel, personnel billets,
14 or funds for the discharge of the requirements in such sec-
15 tions.

16 **SEC. 568C. MONITORING AND ASSESSMENT OF MODIFICA-**
17 **TION OF AUTHORITIES ON COURTS-MARTIAL**
18 **BY INDEPENDENT PANEL ON REVIEW AND**
19 **ASSESSMENT OF PROCEEDINGS UNDER THE**
20 **UNIFORM CODE OF MILITARY JUSTICE.**

21 Paragraph (2) of section 576(d) of the National De-
22 fense Authorization Act for Fiscal Year 2013 (Public Law
23 112–239; 126 Stat. 1762), as amended by section 546 of
24 this Act, is further amended—

1 (1) by redesignating subparagraph (M) as sub-
2 paragraph (N); and

3 (2) by inserting after subparagraph (L) the fol-
4 lowing new subparagraph (M):

5 “(J) Monitor and assess the implementation
6 and efficacy of part IV of subtitle E of title V of the
7 National Defense Authorization Act for Fiscal Year
8 2014, and the amendments made by that part.”.